

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DIDION MILLING, INC.,

Plaintiff,

v.

Case No. 05-C-227

AGRO DISTRIBUTION, LLC.,

Defendant.

**ORDER MODIFYING AND CLARIFYING ORDER FOR SUMMARY
JUDGMENT**

On March 2, 2007, this court denied the motion for summary judgment filed by Didion Milling, Inc. (“Didion”) and granted the motion for summary judgment filed by Agro Distribution, LLC (“Agro”) as to certain grounds of its counterclaim.

In the portion of the portion of this court’s decision wherein it set forth its orders, the court incorrectly indicated that it was granting summary judgment in favor of Agro as to Count V of Agro’s counterclaim. Count V relates to Didion’s use of electrical power and Agro did not move for summary judgment on this ground. As such, the parties did not brief the issue and thus, summary judgment is not appropriate.

Additionally, although the court considers it implicit in its decision, the court shall take this opportunity to clarify that it has not granted summary judgment as to the grounds for relief raised in the counts of the Agro’s counterclaim that were not fully briefed.

The order portion of this court’s decision and order dated March 2, 2007 shall be amended to read:

IT IS THEREFORE ORDERED that Agro's motion for partial summary judgment is granted as follows:

1. Didion's complaint is hereby dismissed with prejudice; and
2. Agro will be granted judgment on Counts II, III as to Agro's claim regarding the \$6,000 cost of installing an electrical meter, and IV of its counterclaim.

IT IS FURTHER ORDERED that Didion's motion to supplement the record (Docket Number 66) is **denied**.

IT IS FURTHER ORDERED that the Didion's motion to strike (Docket Number 70) paragraphs eleven through fifteen of Jonathan C. Miesen's affidavit (Docket Number 61) is granted in part. The court shall accept paragraphs eleven and twelve to the extent that they authenticate Exhibits C and D, respectively.

IT IS FURTHER ORDERED that the court shall conduct a telephone status conference on **March 22, 2007, at 9:30 A.M.** to discuss the status of this case. The court shall initiate the call.

Dated at Milwaukee, Wisconsin this 20th day of March, 2007.

AARON E. GOODSTEIN
U.S. Magistrate Judge